

**BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE**

IN THE MATTER OF:

TENNESSEE SECURITIES DIVISION

Petitioner

v.

ESPY MANAGEMENT FUND, INC.

ESPY FINANCIAL SERVICES

ROBERT PAYNE

BILL SUTTON

JOSEPH KENNEDY

Respondent

DOCKET # 12.01-019547J

NOTICE OF AN INITIAL ORDER BECOMING A FINAL ORDER

All parties are hereby notified that on **December 21, 2001**, the Initial Order entered in this matter became a Final Order pursuant to T.C.A. §4-5-318(f)(3), no party having filed a Petition for Appeal to the Agency pursuant to T.C.A. §4-5-315, within the fifteen (15) days permitted for such petitions, and the Agency having failed to issue a Notice of Intention to Review within the fifteen (15) days permitted under T.C.A. §4-5-315(b).

THE FINAL ORDER MAY BE REVIEWED IN THE FOLLOWING MANNER:

Within fifteen (15) days after the effective date of the Final Order, as listed above, any party may petition the Administrative Judge for reconsideration of the Final Order. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317.

Any party may petition the **Commissioner of the Department of Commerce and Insurance** for a stay of the Final Order within seven (7) days after the effective date of the Order. See T.C.A. §4-5-316.

Any person aggrieved by this final decision may seek judicial review in a Chancery Court having jurisdiction within sixty (60) days after the date of the Final Order as listed above or, if a Petition for Reconsideration of the Final Order is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a Petition for Reconsideration does not itself act to extend the sixty-day period, if the Petition is not granted.) A reviewing court may also order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.

Charles C Sullivan II / gdw

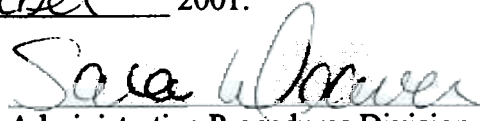
Charles C. Sullivan II, Director
Administrative Procedures Division

If any party has knowledge of an Appeal of the Initial Order or a Notice of Intention to Review the Initial Order having been filed within the required fifteen (15) days, contrary to the above information, please notify this office, telephone (615) 741-7008 or 741-2078, and this Notice may be set aside.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon counsel and all interested parties by delivering same to them at their address of record by placing a true and correct copy of same in the United States mail, postage prepaid.

This 27th day of December 2001.



Administrative Procedures Division
Office of the Secretary of State

**BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE**

IN THE MATTER OF:

TENNESSEE SECURITIES DIVISION
Petitioner

DOCKET NO. 12.01-019547J

v.

ESPY MANAGEMENT FUND, INC .
ESPY FINANCIAL SERVICES
ROBERT PAYNE
BILL SUTTON
JOSEPH KENNEDY

ORDER

THIS ORDER IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS

1. PARTY FILES A WRITTEN APPEAL OR PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN December 21, 2001.
OR

2. THE AGENCY FILES A WRITTEN NOTICE OF REVIEW WITH ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN December 21, 2001.

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION OR NOTICE OF REVIEW WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
312 EIGHTH AVENUE NORTH
8TH FLOOR, WILLIAM R. SNODGRASS TOWER
NASHVILLE, TN 37243

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, 615/741-7008 OR 741-2078 OR FAX 741-4472. PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE**

**TENNESSEE SECURITIES DIVISION,
Petitioner**

v.

**ESPY MANAGEMENT FUND, INC.,
ESPY FINANCIAL SERVICES,
ROBERT PAYNE,
BILL SUTTON,
JOSEPH KENNEDY,
WILLIAM C. JONES and
RICHARD RICHARDSON,
Respondents**

Docket No: 12.01-019547J

NOTICE OF DEFAULT AND INITIAL ORDER

This matter was scheduled to be heard on December 12, 2001. On November 13, 2001, the State filed a Motion to hold the Respondents Espy Management Fund, Inc., Espy Financial Services, Robert Payne, Bill Sutton, Joseph Kennedy, William C. Jones, and Richard Richardson (collectively referred to herein as "Respondents") in Default and a Motion to Deem as Admitted the State's first set of Requests for Admissions, which were mailed to the Respondents on October 11, 2001. As of the date of this Order, the Respondents have not responded to either the State's discovery request, or filed a response to the State's motion with the undersigned Judge.

Rule 1360—4 1—.15(1)(a) of the Uniform Rules of Procedure Governing Contested Cases Before State Administrative Agencies provides, in pertinent part, that "[t]he failure of a party to attend or participate in a prehearing conference, hearing, or other stage of contested case

proceedings after due notice thereof is cause for holding such party in default pursuant to T.C.A. §4—5—309”. It appearing that proper notice was sent to the Respondents, and that the Respondents have failed to participate in the discovery stage of this contested case hearing, the State's motion for **Default is GRANTED.**

In addition, pursuant to Rule 36 of the Tennessee Rules of Civil Procedure, as a result of the Respondent's failure to respond within thirty (30) days to a request for admissions, the matters **addressed in the admissions are hereby ADMITTED.**

The Motion for Default having been granted, and the matters addressed in Request for Admissions having been admitted, the Respondent's are hereby **ORDERED** to cease and desist from all further violations of the Tennessee Securities Act of 1980 (“Act”), as amended, at Tenn. Code **Ann. § 48-2-101 et al.** This determination is based on the following Findings of Fact and **Conclusions of Law:**

FINDINGS OF FACT

1 The Commissioner of Commerce and Insurance (“Commissioner”) has jurisdiction pursuant to the Act, specifically Tenn. Code Ann. §48-2-116(a). Further, it has been held that the Commissioner may lawfully issue Cease and Desist Orders under the Act. *See Wolcotts Financial Services, Inc., v. McReynolds*, 807 S.W.2d 708 (Tenn. App. 1990).

2. The Act assigns the responsibility for administration of the Act to the Commissioner. The Securities Division (“Division”) is the lawful agent through which the Commissioner administers the Act, and is authorized to bring this action for the protection of investors and the public. **The Division's official residence and place of business is in Nashville, Davidson County, Tennessee.**

3 Espy Management Fund, Inc. (“Espy”) is a Georgia corporation with its principal place of business being 7405 Mid Broadwell Trace, Alpharetta, Georgia 30004. Espy has never registered with the Division as a broker-dealer, agent of a broker-dealer, investment adviser, or agent of an investment adviser.

4 Espy Financial Services, Inc. (“EFS”) is a Georgia corporation with its principal place of business being 7405 Mid Broadwell Trace, Alpharetta, Georgia 30004. EFS has never registered with the Division as a broker-dealer, agent of a broker-dealer, investment adviser, or agent of an investment adviser.

5. Robert Payne (“Payne”) is a citizen of the State of Georgia. Payne has never been registered with the Division as a broker-dealer, as an agent of a broker-dealer, or as an investment adviser.

6. Bill Sutton (“Sutton”) is a citizen of the State of Georgia. Sutton has never been registered with the Division as a broker-dealer, as an agent of a broker-dealer, or as an investment adviser.

7 Deborah Kennedy (“Kennedy”) is a citizen of the State of Georgia. Kennedy has never been registered with the Division as a broker-dealer, as an agent of a broker-dealer, or as an investment adviser.

8. William C. Jones (“Jones”) is a citizen of the State of Georgia. Jones has never been registered with the Division as a broker-dealer, as an agent of a broker-dealer, or as an investment adviser.

9. Richard Richardson (“Richardson”) has never been registered with the Division as a broker-dealer, as an agent of a broker-dealer, or as an investment adviser.

10. Respondent's represented to several investors in Tennessee, that they should invest in a high yield bank program that, Respondents contended, offered returns of fifty percent (50%) per month after receiving a fifty percent (50%) return on the initial investment in forty five (45) to sixty (60) days. Respondent's did not provide any prospectuses to the investors.

11. Respondent's represented to investors that Espy was involved with international investments with foreign banks, including the top twenty-five (25) largest banks in the United States, and that they had a five year contract with certain wholesale dealers that loaned money to those banks.

12. Respondent's represented to investors that the investment was subject to the regulatory authority of, and had been approved by, the Federal Deposit Insurance Corporation of the United States Treasury.

13 The investment offered by Respondent's was not registered in Tennessee, was not subject to available exemptions, and was not a covered security, under the Tennessee Securities Act.

14 Respondent's represented to investors that the investor's principle would be guaranteed by Espy. Respondent's issued unsecured and financially worthless promissory notes to back the investment

5 Individuals invested over \$250,000 in the investment vehicle described above

16 Respondent's converted the monies invested by those individuals to their personal use

CONCLUSIONS OF LAW

1. Pursuant to Tenn. Code Ann. § 48-2-116, the Commissioner may make, promulgate, amend and rescind such orders as are necessary to carry out the provisions of the Act provided that such order is in the public interest, necessary for the protection of investors and consistent with the purposes fairly intended by the policy and provision of the Act. Cease and Desist Orders have been held to be proper orders issued under this part. *See Wolcotts Financial Services, Inc., v. McReynolds*, 807 S.W.2d 708 (Tenn. App. 1990).

2. Tenn. Code Ann. § 48-2-104 provides that it is unlawful for any person to offer and/or sell any security in this state unless it is registered under this part, the security transaction is exempted under Tenn. § 48-2-103, or the security is a covered security.

3. Tenn. Code Ann. § 48-2-109 provides, in pertinent part, that it is unlawful for any person to transact business in this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent under this part.

4. Tenn. Code Ann. §48-2-121(a) states, in pertinent part, that it is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly, to employ any device, scheme, or artifice to defraud, make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

5. The State has met its burden of proof by a preponderance of the evidence that the Respondents conducted sales of securities from, in or into this State without first having registered as a broker-dealer or agent of a broker-dealer with the Division.

6. The State has met its burden of proof by a preponderance of the evidence that the Respondents sold securities from, in, or into, this State without having first registered said securities with the Division.

7. The State has met its burden of proof by a preponderance of the evidence that the Respondents employed an artifice, scheme or device to defraud the Investors in connection with the sale of the unregistered securities described above.

It is therefore **ORDERED** that the Respondents Espy Management Fund, Inc., Espy Financial Services, Robert Payne, Bill Sutton, Joseph Kennedy, William C. Jones, and Richard Richardson shall hereby cease and desist from any further violations of the Act.

It is further **ORDERED** that the Respondents Espy Management Fund, Inc., Espy Financial Services, Robert Payne, Bill Sutton, Joseph Kennedy, William C. Jones, and Richard Richardson shall not make any offer or sales of securities in this State without first having lawfully registered with the Division as a broker-dealer or agent thereof and without having first lawfully registered said securities.

As a result of this order, the hearing scheduled for December 12, 2001, is unnecessary, and is hereby **CANCELLED**.

This Initial Order entered and effective this 6th day of December, 2001


Todd R. Kelley
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 6th day of December 2001.

Charles C. Sullivan II
Charles C. Sullivan II, Director
Administrative Procedures Division *aeu*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon all parties by delivering same to them, or to their counsel at their address of record by placing a true and correct copy of same in the United States mail, postage prepaid.

This 6th day of December 2001.

Ashlee E. Galls
Administrative Procedures Division
Office of the Secretary of State

APPENDIX A TO INITIAL ORDER

NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) Either party files a petition for appeal to the agency or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occur, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Eighth Avenue N., Nashville, Tennessee, 37243. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, (stating the specific reasons why the Initial Order was in error) within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within ten (10) days after the Initial Order becomes a Final Order, or within ten (10) days after the entry date of a Final Order by the agency, a party may petition the agency for reconsideration of the Final Order. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.